

Margaret A. McLetchie, Esq.
Nevada Bar No. 10931
Robert L. Langford, Esq.
Nevada Bar No. 3988
LANGFORD MCLETCHIE LLC
616 S. Eighth Street
Las Vegas, NV 89101
Telephone: (702) 471-6565
Facsimile: (702)471-6540
Email: maggie@nvlitigation.com
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRIAN BALLENTINE, an individual;
CATALINO DAZO, an individual; KELLY
PATTERSON, an individual; and GAIL
SACCO, an individual;

Plaintiffs,

VS.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, in its official capacity;
DETECTIVE CHRISTOPHER T. TUCKER,
as an individual and in his official capacity as
a Las Vegas Metropolitan Police Department
Detective; SERGEANT MIKE WALLACE,
as an individual and in his official capacity as
a Las Vegas Metropolitan Police Department
Sergeant; LIEUTENANT JOHN LIBERTY,
as an individual and in his official capacity as
a Las Vegas Metropolitan Police Department
Lieutenant,

Defendants.

Case. No.:

COMPLAINT

[JURY TRIAL DEMANDED]

COME NOW Plaintiffs BRIAN BALLENTINE, an individual; CATALINO

1 DAZO, an individual; KELLY PATTERSON, an individual; and GAIL SACCO, an
 2 individual, by and through their counsel of record, Robert L. Langford, Esq. and Margaret
 3 A. McLetchie, Esq. of the law firm LANGFORD MCLETCHIE LLC, and file this
 4 Complaint for damages pursuant to 42 U.S.C. § 1983 (civil action for deprivation of
 5 rights), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1367(a) (supplemental
 6 jurisdiction), and 28 U.S.C. § 2201 (creation of remedy).

I. NATURE OF THE ACTION

7 Plaintiffs have been improperly arrested, cited, and harassed for engaging in free
 8 speech. For example, Plaintiffs have been improperly arrested, cited, and harassed for
 9 using water-soluble chalk to write messages that are critical of the Las Vegas Metropolitan
 10 Police Department (“LVMPD”). Using water-soluble chalk on public sidewalks is not a
 11 crime, but the LVMPD improperly applied Nevada’s graffiti statute to Plaintiffs for the
 12 purpose of punishing free speech. In fact, the LVMPD does not arrest, cite, or harass
 13 individuals using water-soluble chalk to write messages that are not critical of the LVMPD.

14 This is an action under 42 U.S.C. § 1983 seeking to address: (1) Defendants
 15 LVMPD’s, Detective Christopher T. Tucker’s, Sergeant (“Sgt.”) Mike Wallace’s, and
 16 Lieutenant (“Lt.”) John Liberty’s violations of Plaintiffs’ rights under the First, Fourth, and
 17 Fourteenth Amendments to the U.S. Constitution; and, (2) Defendant LVMPD’s unlawful
 18 policy and practice of permitting its officers to harass, cite, arrest, and search Plaintiffs for
 19 peacefully writing in water-soluble chalk on a public sidewalk, upon which the LVMPD
 20 officers had informed them they could write upon, which violated Plaintiffs’ constitutional
 21 rights to free speech, expression and assembly, rights to be free from unreasonable searches
 22 and seizures and unlawful arrests, and substantive and procedural due process rights.
 23

24 This action also seeks to address Plaintiffs’ state tort claims against Defendant
 25 LVMPD for false imprisonment, negligent training and supervision, and intentional and
 26 negligent infliction of emotional distress, and against Defendants Sgt. Wallace and Lt.
 27 Liberty for intentional infliction of emotional distress. This court has supplemental
 28

1 jurisdiction over the state law claims.

2 Plaintiffs seek a permanent injunction and declaratory relief to redress
 3 Defendants' clear constitutional violations, Defendants' willful and deliberate violations,
 4 and the harm, which is ongoing and irreparable, suffered by Plaintiffs. Furthermore,
 5 Plaintiffs are entitled to damages, costs, and attorney's fees, punitive damages, and any
 6 other relief as victims of civil rights violations and as victims of tort damages.

7 **II. JURISDICTION AND VENUE**

8 1. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 et seq. for civil
 9 claims arising under the Constitution and laws of the United States. Pursuant to § 1331,
 10 this Court has original subject matter jurisdiction over Plaintiffs' claims brought under 42
 11 U.S.C. § 1983.

12 2. This Court has jurisdiction over claims arising under the laws of the State
 13 of Nevada pursuant to supplemental jurisdiction provided for by 28 U.S.C. § 1337(a).

14 3. The prayer for relief is predicated on 28 U.S.C. § 2201 and Fed. R. Civ. P.
 15 Rule 38. This Court has jurisdiction to award Plaintiffs damages pursuant to 42 U.S.C. §
 16 1983 and Nev. Rev. Stat. 41.130. Authorization for the request of attorneys' fees and costs
 17 is conferred by 42 U.S.C. § 1988(b).

18 4. The Defendants acted, purported to act, and/or pretended to act in the
 19 performance of their official duties, and thus the Defendants acted under color of law and
 20 are subject to liability as a state actor pursuant to 42 U.S.C. § 1983.

21 5. Because Defendants are not the arms of the State this suit is not barred by
 22 the Eleventh Amendment to the U.S. Constitution. *See Eason v. Clark County School*, 303
 23 F.3d 1137, 1147 (9th Cir. 2002); *Culinary Workers Union v. Del Papa*, 200 F.3d 614, 619
 24 (9th Cir. 1999).

25 6. The acts or omissions giving rise to the Plaintiffs' claims all occurred in
 26 Clark County, Nevada and all parties reside or operate in Clark County, Nevada. Thus,
 27 pursuant to 28 U.S.C.A. § 1331(b)(2) and 28 U.S.C.A. § 1331(c), venue is proper in the
 28

United States District Court for the District of Nevada.

III. PARTIES

7. During all relevant times herein, Plaintiff Brian Ballentine was, and is, a United States citizen, who resides in Clark County, Nevada.

8. During all relevant times herein, Plaintiff Catalino Dazo, was, and is, a United States citizen, who resides in Clark County, Nevada.

9. During all relevant times herein, Plaintiff Kelly Patterson was, and is, a United States citizen, who resides in Clark County, Nevada.

10. Plaintiffs Ballentine, Dazo, and Patterson are referred to herein as the "Sidewalk Chalker Plaintiffs."

11. During all relevant times herein, Plaintiff Gail Sacco was, and is, a United States citizen, who resides in Clark County, Nevada.

12. Defendant LVMPD is the law enforcement agency for Clark County and the City of Las Vegas. Defendant LVMPD is sued in its official capacity.

13. Upon information and belief, Defendant LVMPD has engaged and engages in a policy and practice of deliberate indifference to the constitutional rights of individual engaging in peaceful protests.

14. Upon information and belief, Defendant LVMPD is aware of and has either explicitly or implicitly condoned or created a policy and practice of allowing LVMPD Officers to enforce Nev. Rev. Stat. 206.330 arbitrarily and/or intentionally to chill free speech critical of LVMPD.

15. Nev. Rev. Stat. 206.330 does not criminalize the use of water-soluble chalk to write messages on public sidewalks.

16. Upon information and belief, Defendant LVMPD has a policy and practice of allowing its officers to violate the law with impunity and has created or failed to address a culture at the LVMPD that its officers are above the law.

17. Upon information and belief, Defendant LVMPD has failed to adequately

1 train LVMPD officers to refrain from engaging in police misconduct, abusing their position
2 of power and engaging in illegal detentions.

3 18. Defendant Detective Christopher T. Tucker is a Detective at LVMPD
4 (hereinafter “Detective Tucker”).

5 19. Upon information and belief, Defendant Detective Tucker violated the
6 Sidewalk Chalker Plaintiffs' First, Fourth, and Fourteenth Amendment rights by
7 questioning Plaintiff Ballentine while he chalked on July 18, 2013 and by issuing arrest
8 warrants on July 26, 2013 charging Plaintiffs Balletine, Dazo, and Patterson of violating
9 NRS 206.330(1)(b).

10 20. Defendant Sgt. Mike Wallace is a Sergeant at LVMPD (hereinafter "Sgt."
11 Wallace").

12 21. Upon information and belief, Defendant Sgt. Wallace violated Sidewalk
13 Chalker Plaintiffs' First, Fourth, and Fourteenth Amendment rights by detaining Sidewalk
14 Chalker Plaintiffs for forty-five (45) minutes and citing Plaintiffs Ballentine and Patterson
15 on June 8, 2013 for writing in chalk on a public sidewalk.

16 22. Lt. John Liberty is a Lieutenant at LVMPD (hereinafter "Lieutenant
17 Liberty").

18 23. Upon information and belief, Defendant Lt. Liberty violated Sidewalk
19 Chalker Plaintiffs' First, Fourth and Fourteenth Amendment rights by threatening to
20 prosecute them for writing in chalk on a public sidewalk while the Sidewalk Chalker
21 Plaintiffs while detaining them for forty-five minutes on June 8, 2013.

22 24. The naming of defendants herein is based upon information and belief.
23 Plaintiffs reserve their rights to name additional defendants and to modify their allegations
24 concerning defendant named herein.

IV. STANDING

27 25. Plaintiffs were and continue to be directly affected by Defendants' practices and policies of violating the constitutional rights of persons based upon their

1 exercise of constitutional rights, as set forth more fully herein, and/or other abuses by
2 Defendants operating under color of law as alleged herein.

3 26. An actual case and controversy exists between Plaintiffs and Defendants
4 concerning their respective rights, privileges, and obligations.

V. FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

The Sunset Activist Collective

8 27. Plaintiffs Ballentine, Dazo, and Patterson are members of a group known
9 as the “Sunset Activist Collective.” Plaintiffs “chalk”, meaning that they write messages in
10 water-soluble chalk on public sidewalks as a way of expressing themselves and, as a way
11 of demonstrating their artistic backgrounds.

12 28. Plaintiff Sacco is not a member of the Sunset Activist Collective, but is a
13 civil rights activist and has been a long-time supporter of the Sunset Activist Collective.

14 29. All Plaintiffs have, and continue to, peacefully protest the practices of
15 Defendant LVMPD.

Chalking Protests Without Incident: 2011-2013

17 30. On October 1, 2011, in response to the arrest of eight people in
18 Manchester, New Hampshire for chalking in protest of police department practices, a
19 protest involving the use of chalk was staged at UNLV police station on Maryland Parkway
20 and Harmon. This event was part of the National Chalk the Police Day. The protesters
21 involved in the demonstration had no direct interaction or confrontation with police.
22 Plaintiff Patterson was present at this protest.

23 31. A year later, on September 30, 2012, during the second annual National
24 Chalk the Police Day, approximately ten people participated in a protest involving chalking
25 on the public sidewalks in front of LVMPD headquarters on Martin Luther King drive.
26 The protesters had no direct interaction, or any sort of confrontation, with police. Plaintiffs
27 Ballentine, Dazo, and Patterson were present at this protest.

32. On October 22, 2012, during the International Day of Action Against

1 Police Brutality, approximately eight people participated in a protest involving the use of
2 chalk at the Regional Justice Center. At that time, three protesters, including Plaintiffs
3 Ballentine and Dazo, were detained by LVMPD Police. Plaintiff Patterson was present at
4 the protest. On this occasion, LVMPD officers informed Plaintiffs Ballentine and Dazo that
5 it was legal to draw in chalk on the sidewalk, but that they could not draw on a building or
6 any steps leading to a building. Plaintiffs Ballentine and Dazo stopped chalking that day.

7 33. After October 22, 2012, the Sidewalk Chalker Plaintiffs followed LVMPD
8 officers' instructions at subsequent protests by only chalking on sidewalks, not on walls or
9 steps.

10 34. On November 23, 2012, during Black Friday demonstrations,
11 approximately 20 people participated in a protest involving the use of chalk at the Wal-
12 Mart located at Eastern and 215. Several members of the Sunset Activist Collective were
13 present, including Plaintiffs Patterson and Ballentine. The individuals present during these
14 protests wrote messages with chalk on the sidewalks outside the parking lot of the Wal-
15 Mart. On this occasion, the protesters involved in the demonstration were prevented from
16 walking across the parking lot by an LVMPD officer.

17 35. On December 6, 2012, on a Thursday before the First Friday art festival,
18 several members of the Sunset Activist Collective, including Plaintiffs Ballentine and
19 Patterson, participated in a protest involving the use of chalk at Charleston Road and Main
20 Street. At that time, the protesters involved in the demonstration had no direct interaction,
21 or any sort of confrontation, with police.

22 36. On January 19, 2013, during a demonstration named Chalk Back,
23 approximately fifteen people, including Plaintiffs Ballentine and Patterson, participated in a
24 protest involving the use of chalk at the Clark County Government Center, located at 500
25 S. Grand Central Parkway. The individuals present wrote messages in chalk on the
26 sidewalk outside the Clark County Government Center, and then decided to walk to
27 LVMPD Headquarters to protest by writing messages in chalk on the sidewalk.

28 37. On January 19, 2013 at the Chalk Back protest, the protesters were

1 walking toward LVMPD Headquarters, an LVMPD officer stopped his car and asked
 2 where the individuals were heading, informed the group to be sure to follow all traffic
 3 laws, and then took no further action.

4 38. On March 9, 2013, during a demonstration named Community Feedback,
 5 approximately twenty people, including Plaintiffs Ballentine and Patterson, participated in
 6 a protest involving sign-waving and the use of chalk at the LVMPD Headquarters.

7 39. On March 9, 2013, the protesters involved in the Community Feedback
 8 demonstration had no direct interaction, or any sort of confrontation, with police.

9 40. On April 13, 2013, during a demonstration named Second Saturday,
 10 approximately twelve people, including Plaintiffs Ballentine, Dazo, and Patterson,
 11 participated in a protest involving sign-waving and the use of chalk.

12 41. On April 13, 2013, the protesters involved in the Second Saturday
 13 demonstration, including Plaintiffs Ballentine, Patterson, and Dazo had no direct
 14 interaction, or any sort of confrontation, with police.

Beginning of Harassment By LVMPD

May Day

17 42. On May 1, 2013, during a demonstration for the annual May Day march, a
 18 number of people were protesting at the Lloyd D. George U.S. Courthouse, located at 333
 19 Las Vegas Boulevard (“Blvd.”) South, Las Vegas, Nevada 89101. While members of the
 20 Sunset Activist Collective, including Plaintiffs Ballentine, Dazo, and Patterson, were
 21 crossing Las Vegas Blvd., a LVMPD officer approached Ballentine in a menacing and
 22 hostile manner. While in the middle of the street, as Ballentine was walking across in a
 23 permitted area to cross, the same LVMPD officer shouted in Ballentine’s face to stop
 24 crossing the street, even though Ballentine explained he wanted to cross the street to leave
 25 the demonstration and was trying to legally cross the street. Upon information and belief,
 26 the officer had no reason to tell Ballentine to stop crossing the street other than to harass
 27 him. Plaintiff Patterson witnessed the LVMPD officer harassing Ballentine. At that time,
 28 the protesters involved in the demonstration had no further direct interaction, or any sort of

1 confrontation, with police. The name of this LVMPD officer is presently unknown to
2 Plaintiffs.

3 43. On May 11, 2013, during a Second Saturday demonstration,
4 approximately 10 people, including Plaintiffs Ballentine, Dazo, and Patterson, participated
5 in a protest involving sign-waving and the use of chalk.

6 44. At that time, the protesters involved in the demonstration had no direct
7 interaction, or any sort of confrontation, with police.

8 **First Citation for Chalking – June 8, 2013**

9 45. On June 8, 2013, during a Second Saturday demonstration, the Sidewalk
10 Chalker Plaintiffs participated in a protest involving sign-waving and the use of chalk at the
11 LVMPD Headquarters.

12 46. At that time, Defendant Sgt. Wallace approached the Sidewalk Chalker
13 Plaintiffs and claimed that writing with chalk on the sidewalk constituted graffiti, for which
14 Defendant Sgt. Wallace was going to issue citations to Sidewalk Chalker Plaintiffs.

15 47. During the June 8, 2013 Second Saturday demonstration, Defendant Sgt.
16 Wallace detained the Sidewalk Chalker Plaintiffs on the sidewalk for approximately forty-
17 five (45) minutes.

18 48. Shortly thereafter, Detective Matchko of the Gang Unit came outside
19 from the LVMPD Headquarters, and Defendant Sgt. Wallace's supervisor, Defendant Lt.
20 Liberty arrived. Defendant Lt. Liberty informed the Sidewalk Chalker Plaintiffs that he
21 contacted a District Attorney and a Judge about whether writing with chalk was illegal.
22 Defendant Lt. Liberty further informed the Sidewalk Chalker Plaintiffs that the Las Vegas
23 City Manager wanted to prosecute the case because the City Manager was responsible for
24 cleaning up the sidewalk chalk.

25 49. On June 8, 2013, Defendant Sgt. Wallace issued Sidewalk Chalker
26 Plaintiffs citations (Citation Numbers 1-04607714, 1-04607715, and 1-04607716) for
27 "placing graffiti" and for "writ[ing] with chalk on public sidewalk" at LVMPD
28 Headquarters.

1 50. The citations written on June 8, 2013 have not been prosecuted.

2 **July 13, 2013 Chalking at LVMPD Headquarters**

3 51. On July 13, 2013, at approximately 7:50 P.M., Plaintiffs Ballentine and
4 Patterson were participating in a protest and chalking at LVMPD Headquarters.

5 52. Upon information and belief, at this time, LMVPD was investigating the
6 Sidewalk Chalker Plaintiffs' planned demonstrations, which included the planned use of
7 sidewalk chalk, which LVMPD had labeled a "criminal activit[y]."

8 53. In the Declaration of Warrants for Ballentine and Patterson prepared by
9 Defendant Detective Tucker, LVMPD alleged that Ballentine's and Patterson's use of
10 water-soluble chalk on July 13, 2013 at LVMPD Headquarters caused between \$250.00
11 and \$5,000.00 worth of damage to the sidewalks. Defendant Detective Tucker issued arrest
12 warrants for Plaintiffs Ballentine and Patterson because of the chalking on July 13, 2013
13 and July 18, 2013, as detailed below.

14 54. Although Plaintiffs Ballentine and Patterson were using water-soluble
15 chalk, the LVMPD called the City of Las Vegas' Graffiti Abatement Team, which resulted
16 in a cost of \$300.00 to clean up the water-soluble chalk. This cost was unnecessary
17 because the chalk was water-soluble and, upon information and belief, was incurred for the
18 purpose of heightening criminal penalties.

19 55. According to page two of LVMPD's Declaration of Warrant for
20 Ballentine prepared by Defendant Detective Tucker, around this time, LVMPD began
21 monitoring social media sites to track Plaintiffs' activities. LVMPD was aware that the
22 Sunset Activist Collective was planning a demonstration at the RJC on July 18, 2013, at
23 approximately 11:00 AM.

24 56. According to page two of LVMPD's Declaration of Warrant for
25 Ballentine prepared by Defendant Detective Tucker, prior to the planned July 18, 2013
26 demonstration at the Regional Justice Center ("RJC"), LVMPD coordinated and initiated
27 an "event" in reference to the planned July 18, 2013, demonstration at the RJC.

28 ///

1 **July 18, 2013 Chalking at the Regional Justice Center**

2 57. On July 18, 2013 at approximately 11:00 AM, the Sidewalk Chalker
 3 Plaintiffs placed messages in water-soluble chalk on the public sidewalks in front of the
 4 Regional Justice Center (“RJC”). All of the Plaintiffs were present. Plaintiff Sacco was
 5 present, but stayed in the car during the demonstration because she was too intimidated by
 6 the strong police presence to get out of the car.

7 58. LVMPD Officers watched as Sidewalk Chalker Plaintiffs, and some other
 8 individuals, wrote messages in water-soluble chalk on the sidewalk for about an hour.
 9 LVMPD officers never told Sidewalk Chalker Plaintiffs to stop writing in chalk.

10 59. The Sidewalk Chalker Plaintiffs, while in front of the RJC on July 18, 2013,
 11 were chalking on the sidewalks, an area they were previously expressly given authority to
 12 protest by LVMPD on October 22, 2012.

13 60. In the Declaration of Warrants for Ballentine, Patterson, and Dazo prepared
 14 by Defendant Tucker, LVMPD subsequently alleged that the Sidewalk Chalker Plaintiffs’
 15 use of water-soluble chalk on July 18, 2013 at the RJC caused between \$250.00 and
 16 \$5,000.00 worth of damage to the sidewalks. Although the Sidewalk Chalker Plaintiffs
 17 were using water-soluble chalk, the LVMPD called the City of Las Vegas’ Graffiti
 18 Abatement Team, which resulted in a cost of \$1,250.00 to clean-up the water-soluble
 19 chalk. This cost was unnecessary because the chalk was water-soluble and, upon
 20 information and belief, was incurred for the purpose of heightening criminal penalties.

21 **Arrest on August 10, 2013**

22 61. On August 10, 2013, the Sidewalk Chalker Plaintiffs were charged with
 23 gross misdemeanors for alleged violations of Nev. Rev. Stat. 206.330 and conspiracy to
 24 commit a crime in violation of Nev. Rev. Stat. 193.050.

25 62. On August 10, 2013, Plaintiffs Ballentine and Patterson were arrested
 26 while they were walking to LVMPD’s headquarters to chalk.

27 63. Defendant LVMPD claimed that The Sidewalk Chalker Plaintiffs
 28 allegedly wrote “derogatory statements” in chalk on the sidewalk outside of the RJC.

1 64. Plaintiff Ballentine spent three days in the Clark County Detention Center,
 2 where he was denied his medications and suffered from anxiety.

3 65. Plaintiff Patterson spent four days in the Clark County Detention Center,
 4 where he was denied to make a PIN to call his attorney.

5 66. Upon information and belief, Defendant LVMPD did not at all relevant
 6 times, and still does not have, appropriate mechanisms, training, supervision, and/or
 7 policies to avoid harms such as those suffered by Plaintiffs and to ensure that officers do
 8 not engage in wrongdoing.

9 67. Upon information and belief, Defendant Sgt. Wallace's practice of issuing
 10 citations to the Sidewalk Chalker Plaintiffs on June 8, 2013 and Defendant LVMPD's
 11 arresting the Sidewalk Chalker Plaintiffs on August 10, 2013 was designed to chill future
 12 speech.

13 68. Upon information and belief, Defendant LVMPD wanted to chill future
 14 speech, as evidenced by Defendant LVMPD's strong presence at the Plaintiffs' protests
 15 and harassment of Plaintiffs at their peaceful protests.

16 **Differential Treatment of Protest Chalking**

17 69. Upon information and belief, where water-soluble chalk is used by
 18 children or for purposes other than protesting LVMPD's practices, Defendant LVMPD
 19 does not harass, cite, or arrest people under Nev. Rev. Stat. 206.330 for drawing in chalk
 20 on public property.

21 **Continued Harassment by LVMPD**

22 70. LVMPD and its officers continue to harass Plaintiffs Ballentine and
 23 Patterson for chalking. Plaintiff Dazo no longer chalks.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION: RIGHT TO FREE SPEECH AND EXPRESSION**

3 VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

4 TO THE CONSTITUTION OF THE UNITED STATES

5 PURSUANT TO 42 U.S.C. § 1983

6 (BY SIDEWALK CHALKER PLAINTIFFS AGAINST ALL DEFENDANTS)

71. Plaintiffs incorporate paragraphs 1 through 70 of this Complaint as if fully
set forth in this section.

72. Defendants acted under color of law, and their actions violated Plaintiffs' rights to freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the U.S. Constitution.

73. The Defendants' actions of harassing, citing, and detaining the Sidewalk Chalker Plaintiffs violated their rights to freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the U.S. Constitution.

74. Defendant LVMPD's actions of arresting Plaintiffs Ballentine and Patterson also violated their rights to freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the U.S. Constitution.

75. Nev. Rev. Stat. 206.330 does not criminalize the use of water-soluble chalk on public sidewalks.

76. Defendant Sgt. Wallace's actions of detaining the Sidewalk Chalker Plaintiffs for forty-five (45) minutes and issuing citations to Sidewalk Chalker Plaintiffs for chalking on June 8, 2013 violated the Sidewalk Chalker Plaintiffs' rights to freedom of speech and expression as guaranteed by the First and Fourteenth Amendments of the U.S. Constitution.

77. Defendant Lt. Liberty's action of harassing the Sidewalk Chalker Plaintiffs on June 8, 2013 by telling them that the Las Vegas City Manager wanted to prosecute them for writing in water-soluble chalk on a public sidewalk violated the Sidewalk Chalker Plaintiffs' rights to freedom of speech and expression as guaranteed by

1 the First and Fourteenth Amendments to the U.S. Constitution.

2 78. Defendant Detective Tucker's action of issuing arrest warrants for
 3 Sidewalk Chalker Plaintiffs for writing in water-soluble chalk on June 8, 2013, July 13,
 4 2013, and July 18, 2013 violated Sidewalk Chalker Plaintiffs rights to freedom of speech
 5 and expression as guaranteed by the First and Fourteenth Amendments of the U.S.
 6 Constitution.

7 79. Defendant LVMPD is liable for its employees' actions because at all
 8 relevant times it was responsible for making and enforcing policies with respect to LVMPD
 9 officer interactions with citizens and ensuring that officers uniformly enforce laws and do
 10 not harass, cite, and arrest persons exercising their constitutional rights.

11 80. Further, Defendant LVMPD failed to make and enforce constitutional
 12 policies with respect to LVMPD officers' interactions with citizens. Defendant LVMPD
 13 failed to do so by harassing, citing, and arresting the Sidewalk Chalker Plaintiffs because of
 14 the content of their messages. Defendant's actions were not narrowly tailored to fulfill a
 15 compelling government interest. Therefore, Defendant's policies and actions violated the
 16 First and Fourteenth Amendments.

17 81. As a direct and proximate result of Defendants' violations of the First and
 18 Fourteenth Amendments, Plaintiffs have suffered, are suffering, and will continue to suffer
 19 damages in an amount subject to proof. In addition, Plaintiffs, as a direct and proximate
 20 result of the Defendants' actions, have sustained and continue to sustain depression,
 21 embarrassment, anxiety, severe mental or physical pain and/or anguish of mind; incurred
 22 substantial medical-related expenses; and are prevented from transacting in their usual
 23 business and enjoyment.

24 82. Plaintiffs are entitled to monetary, compensatory, and punitive damages
 25 from Defendants.

26 83. It has been necessary for Plaintiffs to retain the services of attorneys to
 27 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
 28 interest herein.

1 84. Further, Plaintiffs are entitled to declaratory and injunctive relief.

2 **SECOND CAUSE OF ACTION: RIGHT TO FREE SPEECH AND EXPRESSION**

3 **VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS**

4 **TO THE CONSTITUTION OF THE UNITED STATES**

5 **PURSUANT TO 42 U.S.C. § 1983**

6 **(BY ALL PLAINTIFFS AGAINST DEFENDANT LVMPD FOR CHILLING FREE SPEECH AND**

7 **EXPRESSION)**

8 85. Plaintiffs incorporate paragraphs 1 through 84 of this Complaint as fully
9 set forth in this section.

10 86. Defendants acted under the color of law, and their actions violated
11 Plaintiff's rights to freedom of speech and expression as guaranteed by the First and
12 Fourteenth Amendments to the U.S. Constitution.

13 87. Defendant LVMPD's actions of harassing, citing and arresting citizens
14 engaged in peaceful protests regarding LVMPD's practices improperly restrained and
15 chilled Plaintiffs' right to free speech and expression as guaranteed by the First and
16 Fourteenth Amendments of the U.S. Constitution.

17 88. Defendant LVMPD is liable because at all relevant times Defendant
18 LVMPD was responsible for making and enforcing policies with respect to officer
19 interactions with citizens and ensuring that officers were aware of relevant law with respect
20 to free speech and expression, and Defendant LVMPD failed to do so by permitting its
21 officers to regulate, harass, cite, and arrest citizens for peacefully drawing in chalk on the
22 public sidewalk.

23 89. Plaintiffs intend and continue to write in water-soluble sidewalk chalk on
24 public sidewalks to engage in peaceful demonstrations in the future. Plaintiffs write in
25 chalk because they believe it is the most effective way of expressing their messages and
26 because they can demonstrate their backgrounds in art.

27 90. Based upon previous harassment, citations, and prosecution for using
28 sidewalk chalk, Plaintiffs fear that if they engage in peaceful demonstrations using
sidewalk chalk, they will be prosecuted. Plaintiff Sacco is too scared to chalk, out of a

1 reasonable fear for being arrested while chalking. Plaintiffs Ballentine and Patterson still
2 chalk, but are subjected to harassment by Defendant LVMPD for chalking.

3 91. Defendants' actions of harassing, citing, and detaining the Sidewalk
4 Chalker Plaintiffs have restricted, chilled, and inhibited the speech of Plaintiffs and other
5 non-party individuals. Plaintiffs' protests are less effective because so many people no
6 longer peacefully protest because they are afraid of being harassed, cited, or arrested by
7 LVMPD

8 92. Defendant LVMPD has no compelling state interest in restricting, chilling,
9 and deterring the content and viewpoint of lawful protected speech.

0 93. As a direct and proximate result of Defendants' violations of the First and
1 Fourteenth Amendments, Plaintiffs have suffered, are suffering, and will continue to suffer
2 damages in an amount subject to proof. In addition, Plaintiffs, as a direct and proximate
3 result of the Defendants' actions, have sustained and continue to sustain depression,
4 embarrassment, anxiety, severe mental or physical pain and/or anguish of mind; incurred
5 substantial medical-related expenses; and are prevented from transacting in their usual
6 business and enjoyment.

7 94. Plaintiffs are entitled to monetary, compensatory, and punitive damages
8 from Defendants.

9 95. It has been necessary for Plaintiffs to retain the services of attorneys to
10 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
11 interest herein.

96. Further, Plaintiffs are entitled to declaratory and injunctive relief.

THIRD CAUSE OF ACTION: RIGHT TO ASSEMBLY

VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS
TO THE CONSTITUTION OF THE UNITED STATES
PURSUANT TO 42 U.S.C. § 1983

COMPLAINT TO THE C.S.C.C., 1962

(By SIDEWALK CHALKER PLAINTIFFS AGAINST ALL DEFENDANTS)

97. Plaintiffs incorporate paragraphs 1 through 96 of this Complaint as if fully

1 set forth in this section.

2 98. Defendants acted under the color of law, and violated Plaintiffs' rights to
 3 assembly, as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution.
 4 Defendants investigated, harassed, cited and arrested Plaintiffs for assembling in a group
 5 and writing in water-soluble chalk in a public forum.

6 99. Defendants Sgt. Wallace's and Lt. Liberty's actions of detaining Sidewalk
 7 Chalker Plaintiffs on June 8, 2013 for forty-five (45) minutes violated Sidewalk Chalker
 8 Plaintiffs' rights to assembly, as guaranteed by the First and Fourteenth Amendments to
 9 the U.S. Constitution.

10 100. Defendant Sgt. Wallace's action of citing Sidewalk Chalker Plaintiffs for
 11 writing in water-soluble chalk on June 8, 2013 violated Sidewalk Chalker Plaintiffs' rights
 12 to assembly, as guaranteed by the First and Fourteenth Amendments to the U.S.
 13 Constitution.

14 101. Defendant Detective Tucker's action of issuing arrest warrants for
 15 Sidewalk Chalker Plaintiffs for writing in water-soluble chalk on a public sidewalk in a
 16 group violated their rights to assembly, as guaranteed by the First and Fourteenth
 17 Amendments to the U.S.

18 102. Defendant LVMPD is liable because at all relevant times LVMPD was
 19 responsible for making and enforcing policies with respect to the right to assembly
 20 guaranteed by the First and Fourteenth Amendments, and Defendant failed to do so by
 21 detaining Sidewalk Chalker Plaintiffs at their protests and citing Plaintiffs for assembling
 22 together for a peaceful protest.

23 103. As a direct and proximate result of Defendants' violations of the First and
 24 Fourteenth Amendments, Plaintiffs have suffered, are suffering, and will continue to suffer
 25 damages in an amount subject to proof. In addition, Plaintiffs, as a direct and proximate
 26 result of the Defendants' actions, have sustained and continue to sustain depression,
 27 embarrassment, anxiety, severe mental or physical pain and/or anguish of mind; incurred
 28 substantial medical-related expenses; and are prevented from transacting in their usual

1 business and enjoyment.

2 104. Plaintiffs are entitled to monetary, compensatory, and punitive damages
3 from Defendant, and each of them.

4 105. It has been necessary for Plaintiffs to retain the services of attorneys to
5 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
6 interest herein.

7 106. Further, Plaintiffs are entitled to declaratory and injunctive relief.

8 **FOURTH CAUSE OF ACTION: EQUAL PROTECTION**

9 **VIOLATION OF THE FOURTEENTH AMENDMENT**

10 **TO THE CONSTITUTION OF THE UNITED STATES**

11 **PURSUANT TO 42 U.S.C. § 1983**

12 **(EQUAL PROTECTION)**

13 **(BY SIDEWALK CHALKER PLAINTIFFS AGAINST ALL DEFENDANTS)**

14 107. Plaintiffs incorporate paragraphs 1 through 106 of this Complaint as if
15 fully set forth in this section.

16 108. Throughout all relevant times herein, Defendants acted, purported to act,
17 and/or pretended to act in their official duties.

18 109. Defendant Sgt. Wallace's actions of detaining Sidewalk Chalker Plaintiffs
19 for forty-five minutes and citing them for writing on a public sidewalk in water-soluble
20 chalk on June 8, 2013 violated their rights to equal protection because he does not detain
and cite other individuals, such as children, for writing on public sidewalks in water-
soluble chalk.

21 110. Defendant Lt. Liberty's action of detaining Sidewalk Chalker Plaintiffs on
22 June 8, 2013 and telling them that they will be prosecuted for writing in water-soluble
23 chalk violated their rights to equal protection because Lt. Liberty does not threaten to
24 prosecute other other individuals, such as children, for writing on public sidewalks in
25 water- soluble chalk.

26 111. Defendant Detective Tucker's action of issuing arrest warrants for
27 Sidewalk Chalker Plaintiffs violated their rights to equal protection because he does not
28

1 investigate and issue arrest warrants for individuals, such as children, for writing on public
 2 sidewalks in water-soluble chalk.

3 112. Defendants' conduct deprived Plaintiffs of their fundamental rights
 4 secured by the Fourteenth Amendment, including their rights to freedom of speech and
 5 expression, assembly, unreasonable search and seizure, and to equal protection of the laws.

6 113. Defendants singled out the Sidewalk Chalker Plaintiffs, enforcing Nev.
 7 Rev. Stat. 206.330 against them for using water-soluble chalk on sidewalks, while allowing
 8 other individuals to use water-soluble chalk on sidewalks.

9 114. Defendants' differential enforcement of Nev. Rev. Stat. 206.330 was not
 10 rationally related to any legitimate interest because the chalk was water-soluble and thus
 11 would be easy to clean up, the Plaintiffs were instructed to chalk on sidewalks on October
 12 22, 2012, and the Plaintiffs engaged in chalking in a peaceful manner. Further, LVMPD
 13 watched during many protests where Plaintiffs chalked and did not instruct them to not
 14 chalk, which shows that there was no policy against chalking on the sidewalk and the
 15 chalking did not pose an imminent threat.

16 115. Defendants' differential enforcement of Nev. Rev. Stat. 206.330 was
 17 based on the content of their speech which violated Sidewalk Chalker Plaintiffs' rights to
 18 freedom of speech and expression and assembly because the enforcement was not
 19 necessary to serve a compelling government interest.

20 116. Defendant LVMPD is liable because at all relevant times LVMPD was
 21 responsible for making and enforcing policies with respect to the Equal Protection Clause,
 22 and Defendant failed to do so by detaining Sidewalk Chalker Plaintiffs at their protests and
 23 citing and arresting Plaintiffs for assembling together for a peaceful protest.

24 117. As a direct and proximate result of Defendants' violations of the Equal
 25 Protection Clause, Plaintiffs have suffered, are suffering, and will continue to suffer
 26 damages in an amount subject to proof. In addition, Plaintiffs, as a direct and proximate
 27 result of the Defendants' actions, have sustained and continue to sustain depression,
 28 embarrassment, anxiety, severe mental or physical pain and/or anguish of mind; incurred

1 substantial medical-related expenses; and are prevented from transacting in their usual
2 business and enjoyment.

3 118. Plaintiffs are entitled to monetary, compensatory, and punitive damages
4 from Defendants, and each of them.

5 119. It has been necessary for Plaintiffs to retain the services of attorneys to
6 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
7 interest herein.

120. Further, Plaintiffs are entitled to declaratory and injunctive relief.

FIFTH CAUSE OF ACTION: UNREASONABLE SEARCH AND SEIZURE

VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS

TO THE CONSTITUTION OF THE UNITED STATES

PURSUANT TO 42 U.S.C. § 1983

(RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE)

(BY SIDEWALK CHALKER PLAINTIFFS AGAINST ALL DEFENDANTS)

3 121. Plaintiffs incorporate paragraphs 1 through 120 of this Complaint as if
4 fully set forth in this section.

122. Defendants acted under color of law, and violated Plaintiffs' Rights to be
Free from Unreasonable Searches and Seizures as guaranteed by the Fourth and Fourteenth
Amendments to the U.S. Constitution. On June 8, 2013, Defendants Sgt. Wallace and Lt.
Liberty detained Sidewalk Chalker Plaintiffs for forty-five (45) minutes, thereby
unreasonably searching and seizing them. Defendants Sgt. Wallace and Lt. Liberty
detained the Sidewalk Chalker Plaintiffs' chalk yet, upon belief and information, would not
detain children for writing in water-soluble chalk on a public sidewalk.

22 123. Defendant Detective Tucker violated Sidewalk Chalker Plaintiffs' rights to
23 be free from unreasonable searches and seizures by issuing arrest warrants lacking probable
24 cause, thereby violating their rights to be free from unreasonable searches and seizures.

25 124. On August 10, 2013, Defendant LVMPD's officers arrested Sidewalk
26 Chalker Plaintiffs without probable cause, violating their rights to be free from
27 unreasonable searches and seizures.

1 125. Defendant LVMPD is liable because at all relevant times it was responsible
 2 for making and enforcing policies to ensure searches and seizures were conducted within
 3 the parameters of the law, and Defendant LVMPD failed to do so.

4 126. As a direct and proximate result of Defendants' violations of the Fourth
 5 and Fourteenth Amendment, Plaintiffs have suffered, are suffering, and will continue to
 6 suffer damages in an amount subject to proof. In addition, Plaintiffs, as a direct and
 7 proximate result of the Defendants' actions, have sustained and continue to sustain
 8 depression, embarrassment, anxiety, severe mental or physical pain and/or anguish of
 9 mind; incurred substantial medical-related expenses; and are prevented from transacting in
 10 their usual business and enjoyment.

11 127. Plaintiffs are entitled to monetary, compensatory, and punitive damages
 12 from Defendants.

13 128. It has been necessary for Plaintiffs to retain the services of attorneys to
 14 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
 15 interest herein.

16 129. Further, Plaintiffs are entitled to declaratory and injunctive relief.

17 **SIXTH CAUSE OF ACTION: SUBSTANTIVE DUE PROCESS**

18 **VIOLATION OF THE FOURTEENTH AMENDMENT**
 19 **TO THE CONSTITUTION OF THE UNITED STATES**
 20 **PURSUANT TO 42 U.S.C. § 1983**
 21 **(SUBSTANTIVE DUE PROCESS)**
 22 **(BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

23 130. Plaintiffs incorporate paragraphs 1 through 129 of this Complaint as if
 24 fully set forth in this section.

25 131. Defendants acted under the color of law, and violated Plaintiffs'
 26 substantive due process rights to liberty and free movement as guaranteed by the
 27 Fourteenth Amendment of the U.S. Constitution. Defendants' detention of Plaintiffs
 28 violated their rights to liberty and freedom of movement, locomotion, free expression,
 assembly, and to reasonable search and seizure. Defendants engaged in egregious conduct

1 by harassing, detaining and citing Sidewalk Chalker Plaintiffs for peacefully chalking on a
 2 sidewalk, which LVMPD officers had seen them do so many times without making any
 3 comments to Plaintiffs. Defendants' actions "shocked the conscience" because, upon
 4 information and belief, Nevada citizens were outraged about the arrest of Sidewalk Chalker
 5 Plaintiffs.

6 132. Defendant LVMPD is liable because at all relevant times it was
 7 responsible for making and enforcing policies ensuring that Defendant Metro Officers do
 8 not violate the substantive due process rights of individuals. Defendant failed to do so by
 9 permitting LVMPD officers to harass, cite and arrest Sidewalk Chalker Plaintiffs.

10 133. Plaintiffs do not know, and cannot reasonably determine, when the use of
 11 chalk on a public sidewalk will be permissible, and when the use of chalk on a public
 12 sidewalk will be illegal "graffiti."

13 134. The standards upon which Defendants' actions are based are
 14 impermissibly vague and allow for the exercise of unconstitutional unfettered discretion by
 15 Defendant.

16 135. As a direct and proximate result of Defendants' violations of Plaintiffs'
 17 substantive due process rights, Plaintiffs have suffered, are suffering, and will continue to
 18 suffer damages in an amount subject to proof. In addition, Plaintiffs as a direct and
 19 proximate result of the Defendants' actions have sustained and continue to sustain
 20 depression, embarrassment, anxiety, severe mental or physical pain and/or anguish of
 21 mind; incurred substantial medical-related expenses; and are prevented from transacting in
 22 their usual business and enjoyment.

23 136. Plaintiffs are entitled to monetary, compensatory, and punitive damages
 24 from Defendant.

25 137. It has been necessary for Plaintiffs to retain the services of attorneys to
 26 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
 27 interest herein.

1 **SEVENTH CAUSE OF ACTION: UNLAWFUL DETENTION**

2 **VIOLATION OF THE FOURTH AND FOURTEENTH AMENDMENTS**
 3 **TO THE CONSTITUTION OF THE UNITED STATES**
 4 **UNDER 42 U.S.C. § 1983**

5 **RIGHT TO BE FREE FROM UNLAWFUL DETENTION**

6 **(BY SIDEWALK CHALKER PLAINTIFFS AGAINST DEFENDANTS LVMPD, SGT. WALLACE, AND**
 7 **L.T. LIBERTY)**

8 138. Plaintiffs incorporate paragraphs 1 through 137 of this Complaint as if
 9 fully set forth in this section.

10 139. Defendant LVMPD acted under the color of law, and violated Plaintiffs'
 11 rights to be free from false imprisonment as guaranteed by the Fourth and Fourteenth
 12 Amendments to the U.S. Constitution. Defendant LVMPD seized and subsequently
 13 detained Plaintiffs for several hours claiming legal authority to do so, thus violating
 14 Plaintiffs' rights to be free from unlawful detention as guaranteed by the Fourth and
 15 Fourteenth Amendments of the U.S. Constitution.

16 140. Defendants Sgt. Wallace and Lt. Liberty violated Sidewalk Chalker
 17 Plaintiffs' rights to be free from unlawful detention by detaining Sidewalk Chalker
 18 Plaintiffs for forty-five (45) minutes on June 8, 2013 for writing in water-soluble chalk on a
 19 public sidewalk.

20 141. Defendant LVMPD is liable because it is responsible for making and
 21 enforcing policies with respect to the actions of LVMPD officers and for making them
 22 aware of their authority to seize and detain individuals, and Defendant failed to do so by
 23 allowing its officers to detain the Sidewalk Chalker Plaintiffs without probable cause.

24 142. As a direct and proximate result of the Defendants' conduct, Plaintiffs
 25 have suffered, are suffering, and will continue to suffer damages in an amount subject to
 26 proof. In addition, Plaintiffs, as a direct and proximate result of the Defendants' conduct,
 27 have sustained and continue to sustain depression, anxiety, and severe mental or physical
 28 pain and/or anguish of mind; incurred substantial medical-related expenses, and Plaintiffs
 29 are prevented from transacting in their usual business and enjoyment.

30 143. At all relevant times herein, the Sidewalk Chalker Plaintiffs were

1 conscious of the Defendants' unlawful detention and/or confinement of them.

2 144. It has been necessary for Plaintiffs to retain the services of attorneys to
3 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
4 interest herein.

EIGHTH CAUSE OF ACTION

**VIOLATION OF THE FOURTEENTH AMENDMENT
TO THE CONSTITUTION OF THE UNITED STATES**
PURSUANT TO 42 U.S.C. § 1983
(PROCEDURAL DUE PROCESS)
BY ALL PLAINTIFFS AGAINST ALL DEFENDANT

9 145. Plaintiffs incorporate paragraphs 144 of this Complaint as if fully set forth
0 in this section.

1 146. Defendants acted under the color of the law, and violated Plaintiffs' rights
2 to be free from deprivation of their rights under the U.S. Constitution without due process
3 of law. Defendants infringed upon Plaintiffs' interests in moving freely on the public
4 forum sidewalks by harassing, citing and detaining Plaintiffs for use of the sidewalks,
5 which they were instructed to write upon on October 22, 2012 by LVMPD officers. In
6 doing so, Defendants deprived Plaintiffs of their procedural due process rights ensured by
7 the Fourteenth Amendment to the U.S. Constitution.

147. Defendant LVMPD's policy and practice of harassing, citing and
detaining Plaintiffs for peacefully writing in water-soluble chalk on public sidewalks risks
and causes wrongful deprivation of Plaintiffs' liberty interests in using public sidewalks in
Nevada.

22 148. Defendant LVMPD is liable because at all relevant times, Defendant
23 LVMPD was responsible for making and enforcing policies with respect to citing and
24 detaining citizens in accordance with the constitution, and Defendant LVMPD failed to
25 make and enforce such constitutional policies by allowing Defendant LVMPD officers to
26 harass, cite and detain Plaintiffs with no legal basis to do so.

1 149. As a direct and proximate result of Defendants' violations of the
2 Fourteenth Amendment, Plaintiffs have suffered, are suffering, and will continue to suffer
3 damages in an amount subject to proof, and Plaintiffs are entitled to: injunctive and
4 declaratory relief against Defendant LVMPD, attorneys' fees and costs, and monetary,
5 compensatory, and punitive damages.

NINTH CAUSE OF ACTION

VIOLATION OF THE CONSTITUTION TO THE STATE OF NEVADA
(BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)

9 150. Plaintiffs incorporate paragraphs 1 through 149 of this Complaint as if
10 fully set forth in this section.

151. It has been necessary for Plaintiffs to retain the services of an attorney to pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment interest herein.

152. Plaintiffs' rights to speech, peaceable assembly, and expressive conduct are impermissibly restricted, chilled, deterred and inhibited by the actions of Defendants.

153. Art. 1, § 9 of the Constitution of the State of Nevada provides “[e]very citizen may freely speak, write and publish his sentiments on all subjects [...] and no law shall be passed to restrain or abridge the liberty of speech [...].”

154. Art. 1, § 10 of the Constitution of the State of Nevada provides “[t]he people shall have the right freely to assemble together to consult for the common good [....].”

155. Defendants' actions, as alleged herein, constitute violation of Plaintiffs' rights under the Constitution of the State of Nevada, Article 1, §§ 9 – 10.

156. As a direct and proximate result of Defendants' violations of the Constitution of the State of Nevada, Plaintiffs have suffered, are suffering, and will continue to suffer damages in an amount subject to proof. In addition, Plaintiffs, as a direct and proximate result of the Defendants' actions, have sustained prolonged depression, embarrassment, anxiety, severe mental or physical pain and/or anguish of mind; incurred

1 substantial medical-related expenses; and are prevented from transacting in their usual
2 business and enjoyment.

3 157. Plaintiffs are entitled to monetary, compensatory, and punitive damages
4 from Defendant's, and each of them.

5 158. It has been necessary for Plaintiffs to retain the services of attorneys to
6 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
7 interest herein.

TENTH CAUSE OF ACTION

NEGLIGENT TRAINING, SUPERVISION, AND RETENTION

UNDER N.R.S. 41.130

(BY SIDEWALK CHALKER PLAINTIFFS AGAINST DEFENDANT LVMPD)

1 159. Plaintiffs incorporate paragraphs 1 through 158 of this Complaint as if
2 fully set forth in this section.

3 160. Defendant LVMPD had a duty to use reasonable care in the training,
4 supervision, and retention of their employees to make sure that their employees are fit for
5 their positions by implementing policies and procedures designed to prevent wrongful acts
6 by its employees, such as those committed by Defendant against Plaintiffs.

7 161. Defendant LVMPD breached this duty by allowing LVMPD officers to
8 harass, cite and detain Sidewalk Chalker Plaintiffs, and thus improperly enforce Nev. Rev.
9 Stat. 206.330, for peacefully writing on the sidewalk with chalk. Defendant LVMPD
10 should have known about this breach of their duty about since the chalking occurred
11 outside LVMPD's office many times.

162. Defendant LVMPD's breach of this duty caused Plaintiffs to suffer severe
emotional distress, as evidenced by Plaintiffs having anxiety around LVMPD officers and
when expressing themselves by chalking.

163. Defendant LMVPD is liable because at all relevant times, the officers
25 were in the employ of the LVMPD and LVMPD is responsible for LVMPD's officers'
26 conduct. Defendant LVMPD's officers were not acting independently, committed the
27 wrongful acts during the course of their official duties as police officers, and such actions
28

were reasonably foreseeable considering the nature and scope of their employment as police officers.

3 164. As a direct and proximate result of Defendant LVMPD's failure to
4 adequately train the LVMPD officers, Plaintiffs have suffered, are suffering, and will
5 continue to suffer damages in an amount subject to proof. In addition, Plaintiffs as a direct
6 and proximate result of the Defendant's actions, have sustained and continue to sustain
7 depression, embarrassment, anxiety, severe mental or physical pain and/or anguish of
8 mind; incurred substantial medical-related expenses; and are prevented from transacting in
9 their usual business and enjoyment.

0 165. Plaintiffs are entitled to monetary, compensatory, and punitive damages
1 from Defendants, and each of them.

2 166. It has been necessary for Plaintiffs to retain the services of attorneys to
3 pursue this matter and Plaintiffs are entitled to attorneys' fees, costs, and prejudgment
4 interest herein.

ELEVENTH CAUSE OF ACTION
FALSE IMPRISONMENT UNDER N.R.S. 41.130
(BY SIDEWALK CHALKER PLAINTIFFS AGAINST DEFENDANT LVMPD)

7 167. Plaintiffs incorporate paragraphs 166 of this Complaint as if fully set forth
8 in this section.

168. Defendant LVMPD officers confined Sidewalk Chalker Plaintiffs on a
169 public sidewalk on June 8, 2013 and arrested them on August 10, 2013. Plaintiffs were both
170 aware of and harmed by the confinement and arrest.

23 169. Defendant LVMPD is liable because LVMPD officers were at all relevant
24 times in the employ of LVMPD and Defendant LVMPD is responsible for LVMPD
25 officers' conduct. LVMPD officers were not acting independently, committed the
26 wrongful acts during the course of their official duties as LVMPD officers, and such
actions were reasonably foreseeable when Defendant LVMPD maintained a policy that its

1 officers could detain individuals engaged in lawful, protected activity on the public forum
2 sidewalks.

3 170. As a direct and proximate result of Defendant LVMPD's false imprisonment
4 of Plaintiffs, Plaintiffs have suffered, are suffering, and will continue to suffer damages in
5 an amount subject to proof and pursuant to N.R.S. 41.130, Plaintiffs are entitled to actual
6 and foreseeable monetary damages, and attorneys' fees and costs.

TWELFTH CAUSE OF ACTION

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS UNDER N.R.S. 41.130

(BY SIDEWALK CHALKER PLAINTIFFS AGAINST DEFENDANTS LVMPD, SGT. WALLACE, AND
LT. LIBERTY)

171. Plaintiffs incorporate paragraphs 170 of this Complaint as if fully set forth
in this section.

172. Defendant LVMPD intentionally caused Plaintiffs to suffer severe
emotional distress as evidenced by its outrageous conduct of harassing Sidewalk Chalker
Plaintiffs for no lawful reason. For example, on May 1, 2012, a LVMPD officer yelled in
Plaintiff Ballentine's face for crossing a street.

173. Defendants Sgt. Wallace and Lt. Liberty conducted themselves with
reckless disregard for inflicting emotional distress on Sidewalk Chalker Plaintiffs by
detaining them for forty-five (45) minutes on June 8, 2013 and telling them they would be
prosecuted for writing in water-soluble chalk on a public sidewalk.

174. On August 10, 2013, Plaintiffs Ballentine and Patterson were arrested by
1 Defendant LVMPD officers for peacefully writing in chalk on public sidewalks in which
2 they were instructed to write upon. Plaintiff Ballentine spent three days in jail and Plaintiff
3 Patterson spent four days in jail. LVMPD officers conducted themselves with reckless
4 disregard for inflicting emotional distress on Plaintiffs.

175. Defendant LVMPD is liable because LVMPD officers were at all relevant
times in the employ of LVMPD and LVMPD is responsible for LVMPD officers' conduct.
LVMPD officers were not acting independently, committed the wrongful acts during the

1 course of their official duties as LVMPD officers, and such actions were reasonably
 2 foreseeable where Defendant LVMPD maintained a policy of harassing, citing and
 3 detaining people for writing in water-soluble chalk on a public sidewalk.

4 176. As a result of Defendant LVMPD's conduct, Sidewalk Chalker Plaintiffs
 5 have suffered, are suffering, and will continue to suffer severe emotional distress. Plaintiff
 6 Ballentine has stated that he does not want to live anymore since he feels like LVMPD will
 7 harass him if he expresses himself. Additionally, while in jail, Plaintiff Ballentine, who has
 8 medical issues for which he needs medication, was denied his medication, which added to
 9 his emotional distress suffered by the arrest. Sidewalk Chalker Plaintiffs continue to suffer
 10 damages in an amount subject to proof. Pursuant to N.R.S. 41.130, Plaintiffs are entitled to
 11 compensatory damages from Defendants and attorneys' fees and costs.

THIRTEENTH CAUSE OF ACTION

NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS UNDER N.R.S. 41.130 **(BY PLAINTIFF BALLENTINE AGAINST DEFENDANT LVMPD)**

12 177. Plaintiffs incorporate paragraphs 1 through 176 of this Complaint as if
 13 fully set forth in this section.

14 178. Defendant LVMPD owed Plaintiff Ballentine a duty to not harass,
 15 unlawfully cite and unlawfully imprison him for engaging in lawful, peaceful activity on
 16 public property, and breached that duty by harassing, unlawfully citing and unlawfully
 17 imprisoning Plaintiff Ballentine.

18 179. Defendant LVMPD's breach of this duty inflicted severe emotional
 19 distress upon Plaintiff Ballentine, who now has constant anxiety regarding LVMPD and
 20 expressing himself.

21 180. Defendant LVMPD's breach of this duty inflicted physical injury upon
 22 Plaintiff Ballentine who needed his medication, but was denied it while in jail.

23 181. Defendant LVMPD is liable because LVMPD officers were at all relevant
 24 times in the employ of LVMPD officers and the LVMPD is responsible for LVMPD
 25 officers' conduct. LVMPD officers were not acting independently, committed the

wrongful acts during the course of their official duties as officers, and such actions were reasonably foreseeable where LVMPD maintained a policy of harassing, citing and detaining people for writing in water-soluble chalk on a public sidewalk.

4 182. As a direct and proximate result of Defendant LVMPD's infliction of
5 emotional distress upon Plaintiff Ballentine, Plaintiff Ballentine has suffered, is suffering,
6 and will continue to suffer damages in an amount subject to proof and, pursuant to N.R.S.
7 41.130. Plaintiff Ballentine is entitled to compensatory damages from Defendant LVMPD
8 and attorneys' fees and costs.

VII. PRAYER FOR RELIEF

0 WHEREFORE, Plaintiffs respectfully pray as follows:

1 a. A declaration that Defendant LVMPD's failure to make or enforce policies
2 and practices with respect to wrongful actions of LVMPD's officers in regulating,
3 harassing, citing, and detaining individuals engaged in lawful, protected activity on public
4 forum sidewalks is unlawful and that the harassment, detainment, arrest and search isolated
5 their rights to free speech and expression under the free speech clause of the First
6 Amendment to the U.S. Constitution, rights to be free from unlawful arrest under the
7 Fourth Amendment to the U.S. Constitution, rights to be free from unreasonable searches
8 and seizures under the Fourth Amendment to the U.S. Constitution, substantive due process
9 rights to freedom of movement and liberty under the Fourteenth Amendment to the U.S.
10 Constitution, and procedural due process rights under the Fourteenth Amendment to the
11 U.S. Constitution;

b. A permanent injunction preventing Defendant LVMPD and their officers from violating the constitutional civil rights of individuals based upon the false assertion that Defendant LVMPD may regulate, harass, cite, arrest, detain and search, or otherwise interfere with individuals engaged in lawful, protected activity on public forum sidewalks;

c. Damages and punitive damages to be determined at trial;

d. An award of attorney's fees and expenses under 42 U.S.C. § 1988(b); and,

1 e. Any further relief the Court deems appropriate.
2
3

4 **VIII. DEMAND FOR JURY TRIAL**
5

6 Plaintiffs hereby demand a jury trial on all causes of action.
7
8

9 RESPECTFULLY SUBMITTED this 26th day of September, 2014
10
11

12 By: */s/ Margaret A. McLetchie*
13 Margaret A. McLetchie, Esq.
14 Nevada Bar No. 10931
15 LANGFORD MCLETCHIE LLC
16 616 S. Eighth Street
17 Las Vegas, NV 89101
18
19
20
21
22
23
24
25
26
27
28

LANGFORD MCLETCHIE LLC
ATTORNEYS AT LAW
616 SOUTH EIGHTH STREET
LAS VEGAS, NEVADA 89101
(702) 471-6565 • FAX (702) 471-6540